

Date: Mon, Feb 11, 2013 at 1:32 PM
Subject: Surrounding Communities
To: mgccomments@state.ma.us

Stephen Crosby, Chair
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Chair Crosby,

On behalf of the City of Northampton, I am pleased to submit the following comments in response to the Massachusetts Gaming Commission's draft regulation **109.01: Determination of Surrounding Communities**.

Northampton has worked for decades to create a unique economy with a strong base of locally-owned businesses, great schools, safe neighborhoods, and a vibrant downtown that is an unmatched retail, dining, and arts and entertainment destination in our region and New England. Our community

was named "Number One Best Small Arts Town in America" by author John Villani and one of the "Top 25 Arts Destinations" in the nation by AmericanStyle magazine. Our Main Street won the "Great Places in America" Award from American Planning Association.

On any given day, Northampton attracts hundreds of visitors who come here to shop in one of our 100 retail stores, eat in one of our 40 local restaurants, appreciate art in one of our 20 plus shops and galleries, or enjoy live music performed by local and national acts at one of a half-dozen entertainment venues. This includes our municipally-owned, historic Academy of Music Theatre, the Calvin Theatre, and the renowned Iron Horse Music Hall.

I am concerned that the regulations as currently drafted do not fully account for the fact that communities like Northampton with strong, well-established entertainment, restaurant, and service sectors will be impacted by the siting of a gaming establishment offering these same amenities drawing from the same area. As such, I urge you to add the following sentence to § **109.01(2)(d)** of the draft regulation: *"There shall be an assumption that those communities with downtowns with strong entertainment, restaurant, and service sectors that draw in part from the area near the gaming establishment are likely to be significantly and adversely affected."*

In addition, the City of Northampton, along with Springfield, Holyoke, and Westfield, is one of the four Census Bureau-defined "central cities" in the Springfield Metropolitan Statistical Area (MSA). This is significant because these four cities are providing key services in the region that only a central city can and the introduction of a gaming facility within the larger Metropolitan Statistical Area will have potential impacts on those central cities. I urge you to insert the following sentence into § **109.01(2)(e)** of the draft regulation: *"There shall be an assumption that central cities within the same Metropolitan Statistical Areas are surrounding communities."*

Finally, the City of Northampton respectfully submits that the provision contained in § **109.1(2)**, which states *"The commission's determination shall be final and shall not be subject to further review,"* should be deleted. The discretionary acts of a public commission must be based upon the standards set forth in its regulations and upon subsidiary factual findings supported in the

record. The exercise of unbridled and unreviewable discretion, as proposed in the Commission's regulations, is contrary to traditional notions of fairness and due process. For that reason, our Legislature has provided for an action in the nature of certiorari, which authorizes the filing of an action in the nature of certiorari to "correct errors in proceedings ... not otherwise reviewable by motion or appeal....". See *C&S Wholesale Grocers, Inc. v. City of Westfield*, 436 Mass. 459, 466 (2002).

The City submits that the determination of whether to grant or deny a request for designation as a surrounding community relative to a specific gaming establishment should be subject to review to ascertain whether that determination was "arbitrary and capricious." Denial of this right of review threatens to irreparably prejudice the rights of the participants in this process, both applicants and communities alike.

Thank you for the opportunity to offer these comments on your draft regulations. The City of Northampton looks forward to continued participation in the Gaming Commission's regulatory process, in particular its efforts to ensure that the siting of gaming establishments in the Commonwealth of Massachusetts do not create negative local or regional impacts.

Sincerely,

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